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537961—43——1

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 89

JACKSONVILLE PAPER COMPANY, A CORPORATION, PETITIONER

v.

THE UNITED STATES, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Customs Court is reported in 8 Cust. Ct. 242, C. D. 615. The opinion of the United States Court of Customs and Patent Appeals is reported in C. A. D. 228, Treasury Decisions Advance Sheets April 15, 1943, page 39.

JURISDICTION

The judgment of the United States Court of Customs and Patent Appeals was entered in the United States Customs Court on April 17, 1943.

The petition for writ of certiorari was filed on June 7, 1943. The jurisdiction of this Court is invoked under section 195 of the Judicial Code, as amended, 28 U. S. C., Section 308.

STATUTES INVOLVED

The relevant provisions of the Tariff Act of 1930 and other statutes involved are set forth in the Appendix, *infra,* pp. 11–18.

QUESTIONS PRESENTED

1. Whether the Court of Customs and Patent Appeals improperly found facts contrary to the findings of the lower court.

2. Whether the express statutory provision that duties should be based on the value entered by the importer, when higher than the final appraised value, should be disregarded when the importer, unaware of legal remedies available to him, enters a value higher than he thought to be necessary because of pressure exerted by customs officials.

STATEMENT

In 1936, the petitioner imported several consignments of paper from Sweden and entered them at the port of Jacksonville, Florida. Petitioner contended that the proper basis for appraising the paper was the export value as defined in section 402 (d) of the Tariff Act of 1930 (p. 13, *infra*), which value was $2.60 per 100 pounds. (R. 14–31.) The Collector of Customs contended that the proper basis for appraising the paper was the foreign

value as defined in section 402 (c) of the Tariff Act (pp. 12–13, *infra*), which was considerably higher than the export value. After discussing the matter with representatives of the office of the collector the petitioner added to the export value of $2.60 per 100 pounds amounts sufficient to make the foreign value and entered the paper at the higher value. (R. 72–75.) The appraiser then appraised the paper on the basis of the foreign value. Thereafter the petitioner filed appeals to reappraisement in the Customs Court, and after a trial that court decided that the proper basis for appraising the paper was the export value, and then reappraised the paper at $2.60 per 100 pounds less 2 percent discount (R. 66–69). *United States* v. *Jacksonville Paper Co.*, 4 Cust. Ct. 662.

Notwithstanding the decision of the Customs Court, the collector, when liquidating the entries, assessed duty on the basis of the foreign or higher value entered by petitioner. This was done pursuant to section 503 (a) of the Tariff Act (p. 18, *infra*), which provides that ad valorem duties shall be assessed on the basis of the entered or the final appraised value, whichever is higher, unless the importer files a so-called duress certificate as permitted by section 503 (b) of the Tariff Act (p. 18, *infra*). Petitioner paid the higher duties and then brought the present suit in the Customs Court to recover a refund of duties, contending that it had entered the paper at the higher value under duress (R. 23–24).

There was sharp conflict in the testimony as to what occurred in the conversations between petitioner's representatives and the customs officers five years before (R. 42–65).[1] The Customs Court apparently concluded from petitioner's testimony that petitioner entered its merchandise at the higher value "under threat that otherwise the merchandise would be subject to the assessment of additional duties for undervaluation." It then expressely found that the weight of the evidence indicated that the customs officers influenced or required the importer to enter the paper at higher values than the correct dutiable value. (R. 83–84.) Although expressing the view that the influence exerted by the customs officers constituted moral duress, the court ruled that it must determine the rights of the importer strictly in accordance with the written law. The statute, it found, compelled the collector to assess duty on the entered value, since it was higher than the appraised value, and since a so-called duress certificate had not been filed. It thereupon entered judgment against the petitioner (R. 72–88).

The Court of Customs and Patent Appeals affirmed the judgment of the Customs Court (R. 99). It held that the influence exerted by the customs officers did not constitute legal duress and that the statute did not permit the granting of relief to the importer (R. 90–98).

[1] The hearing was held March 18, 1941 (R. 32).

ARGUMENT

1. Petitioner's argument that the Court of Customs and Patent Appeals had no authority to disturb the findings of fact of the Customs Court is clearly untenable. In the first place, the appellate court has such powers; Section 195 of the Judicial Code (28 U. S. C., Section 308, *infra*, p. 12) authorizes the Court of Customs and Patent Appeals to exercise appellate jurisdiction "as to the construction of the law *and the facts*" in cases involving the classification of merchandise and the rate of duty imposed. Petitioner has apparently been misled by the procedure in reappraisement cases prescribed in Section 501 of the Tariff Act of 1930 (19 U. S. C., Section 1501, *infra*, pp. 15–18); in such cases the importer appeals from one judge of the Customs Court to three judges of the same court, and from the decision of the three-judge court he may appeal to the Court of Customs and Patent Appeals only on "questions of law."[2]

[2] Except in reappraisement cases, the Customs Court sits in divisions of three judges, as it did here (Jud. Code, Section 187 (a), 28 U. S. C., Section 296). In a reappraisement case, the court merely determines the valuation of the goods but, since the duty has not been finally determined at that point, does not order repayment of any sums collected. Petitioner here is seeking to recover amounts claimed to be overpaid (R. 14–15), and its complaint was heard by three judges of the Customs Court, under Section 514 of the Tariff Act (19 U. S. C., Section 1514). Thus, although this case arises out of a dispute as to valuation, it is not an appeal to reappraisement under Section 501 but a protest, filed under Section 514, as to the amount of duties to be paid.

In any event, in the present case the Court of Customs and Patent Appeals did not overturn the findings of fact of the court below. The opinion shows that the appellate court accepted the factual finding that the petitioner was influenced by the customs officers to enter its merchandise at the higher valuation (R. 97). Its disagreement with the trial court was solely with respect to the conclusion of law reached by that court that the action of the customs officers was legally sufficient to constitute duress. The appellate court assumed the facts found by the trial court to be true, but reached the conclusion that those facts did not justify a holding that legal duress had been exerted, for the reason that petitioner had remedies other than the raising of the values both to obtain possession of its merchandise and to avoid any penalties that might be imposed. That this conclusion was correct will appear from a discussion of the merits of the case.

2. Section 503 (a) of the Tariff Act of 1930 provides that—

> Except as provided in section 562 of this Act (relating to withdrawal from manipulating warehouses) and in subdivision (b) of this section, the basis for the assessment of duties on imported merchandise subject to ad valorem rates of duty shall be the entered value or the final appraised value, whichever is higher.

In this case the entered value was higher than the final appraisal value, and petitioner did not bring

itself within any of the excepting clauses in the statute. Both lower courts accordingly held that the statute should be applied as it read and that petitioner must be assessed on the basis of the entered value.

The Customs Court indicated that petitioner's real grievance was that it regarded itself as forced to enter the goods on the basis of the higher foreign value in order to avoid the threat of additional duties for undervaluation (R. 83–84). But the very section of the statute which imposes the additional duties (Section 489, 19 U. S. C., Section 1489, *infra*, pp. 13–15) provides that they may be remitted if the Customs Court finds "* * * that the entry of the merchandise at a less value than that returned upon final appraisement was without any intention to defraud the revenue of the United States or to conceal or misrepresent the facts of the case or to deceive the appraiser as to the value of the merchandise. * * *" This is the customary method by which importers who challenge appraisements unsuccessfully but in good faith avoid the payment of additional duty.[3] Petitioner

[3] Under Section 503 (b) an importer may also avoid the effect of Section 503 (a) by filing a "duress" certificate that he has entered the merchandise at a high value because of advances in valuation made by appraisers in similar cases then pending on appeal; if the importer's contention is sustained in such other cases, and if his action was taken in good faith, the importer is not bound by his original entered valuation. In the present case, petitioner and the customs officers were both unaware that a similar case was pending in New York (R. 88).

was thus not required to overvalue his goods in order to avoid the making of extra payments.

Under the Act and Regulations an importer may obtain a release of merchandise from customs custody by filing an appropriate bond.[4] It does not appear that petitioner sought to obtain the release of its goods by this means, and it may be that petitioner did not understand its rights in this respect. The court below concluded that although the customs officials had not made clear to petitioner its legal rights, they had not misled petitioner (R. 96).[5]

It is thus plain that the present tariff law provides a complete system of corrective justice. Petitioner here had remedies available whereby it could have avoided the additional payments which it feared. The alleged threat as to the assessment of extra duties was effective only because petitioner was ignorant of the law. However desirable it may be for customs officials to advise citizens of all of their legal rights, their failure to leave petitioner with a correct "impression" (R. 97) can hardly justify disregard of the plain language of the statute.

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[4] Section 623, 19 U. S. C., Section 1623; Customs Regulations, 1937, Article 314.

[5] The customs officials testified that they had informed petitioner that the goods would be released if a sufficient bond were filed (R. 76–78), but this was denied by petitioner's witnesses (R. 78).

Petitioner urges that the statutory language is not binding when the higher value is entered under "duress." The court below, we submit, properly held that there was no duress, in view of the remedies available to petitioner. In any event, the cases upon which petitioner relies, *Maxwell* v. *Griswold,* 10 How. 242, and *Robertson* v. *Frank Bros. Co.,* 132 U. S. 17, do not justify the refusal to follow the plain language of the present law. Those cases arose under an early statute (5 Stat. 727, *infra,* p. 11), which made a protest at the time of payment a prerequisite to a suit against a collector for refund; this Court held that the payments of duties under factual circumstances somewhat similar to those in the case at bar were made under moral duress and were thus to be treated as under protest rather than voluntary. It was entirely reasonable, where the importer would otherwise be without remedy, to construe the word "protest" as reaching a definitely involuntary payment. The question here, however, is whether, when an importer has ample statutory protection, an exception should be read into a perfectly clear statute because the importer is unfamiliar with his legal remedies. The cases cited obviously have no bearing upon the latter problem.

CONCLUSION

The decision of the court below is sound, and the judgment is correct whether based upon the

decision of the Customs Court or that of the Court of Customs and Patent Appeals. There are no conflicts of decision, and the case presents no question of public importance. The petition should be denied.

Respectfully submitted.

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